

ALIGARH DEVELOPMENT AUTHORITY

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v.

MEGH SINGH & ORS.

(Civil Appeal No. 4821 of 2016)

MAY 05, 2016

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[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

Land Acquisition Act, 1894: ss.4(1), 6, 17 – Acquisition of land – According to appellant-authority, possession of land was taken and part of compensation was deposited with the Special Land Acquisition Officer – Respondent no.1-land owner filed writ petition challenging the acquisition – High Court allowed the writ petition on the ground that after invoking emergency clause, no award was passed even after expiry of four years – Plea of land owner that acquisition proceedings lapsed in view of operation of s.24 of 2013 Act since neither compensation has been paid to the owner nor possession has been taken by LA Officer – Held: In the instant case, since the award has not been passed, there is no occasion of lapse of proceedings – Land acquisition proceedings would continue but with the rider that the award will have to be passed and compensation determined under the provisions of 2013 Act – Having regard to the factual matrix of the residential colony having been set up, which fact is not controverted also, it cannot be said that there was an urgency for the acquisition – Therefore, the approach made by the High Court is not correct – Appellant and the Acquisition Authority are directed to complete the acquisition proceedings by passing an award under the provisions of the 2013 Act – Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24.

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Disposing of the appeal, the Court

HELD : Section 24 of the 2013 Act envisages mainly two situations; i) where the land acquisition proceedings had already been initiated under the 1894 Act but no award was passed till the date the new Act came into force and (ii) where the Award has been passed but neither the owner has been dispossessed nor has he been paid the compensation. Under the first, where

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A the award had not been passed, the acquisition proceedings could continue; but the compensation will have to be determined under the scheme of 2013 Act. Under the second category, there is a statutory lapse of the proceedings. There is also an incidental third situation, where award under the 1894 Act had already been passed prior to coming into force of the 2013 Act, but payment is yet to be made and possession is yet to be taken. In that case, the further proceedings after the award could continue under the old Act of 1894; but if either payment or possession has not taken effect in five years prior to the 2013 Act, then proceedings will lapse. In the case in hand, since admittedly the award has not

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C been passed, there arises no question of lapse. The land acquisition proceedings would continue but with the rider that the award will have to be passed and compensation determined under the provisions of 2013 Act. In that view of the matter, it is not necessary to go into various other aspects. Having regard to the factual matrix of the residential colony having been set up,

D which fact is not controverted also, it cannot be said that there was an urgency for the acquisition. Therefore, the approach made by the High Court is not correct. However, the stand of the Authority that it had deposited 80% of the compensation with the land acquisition officers and hence it was for the owner to collect the money, cannot be appreciated. That is a matter between the Requisitioning Authority and the Acquisitioning Authority. There is no question of 'come and get' the compensation while compulsorily acquiring the land; the approach required under law is 'go and give'. In this case, no award has been passed and the land value has not been given to the owner.

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F The impugned order is hence set aside. The appellant and the Acquisitioning Authority are directed to complete the acquisition proceedings by passing an award under the provisions of the 2013 Act. [Paras 6, 7, 8] [762--G-H, 763-A-E]

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4821 of 2016.

From the Judgment and Order dated 21.10.2010 in CMWP No. 57925 of 2008 passed by the High Court of Judicature at Allahabad.

Kavin Gulati, Sr. Adv., Rajeev Dubey, Rohit Sthelekar, Kamlendra H Mishra for the Appellant.

Dinesh Kumar Garg, Dhananjay Garg, Deepak Mishra, Gunnam Venkateswara Rao, Ms. Chandan Ramamurthi for the Respondents. A

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. The appellant- Aligarh Development Authority took steps for acquisition of land belonging to the respondent No.1 as per Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (For short '1894 Act') on 09.08.2004. Simultaneously emergency clause was also invoked under the provisions of Section 17 followed by Section 6 declaration dated 03.08.2005. According to the appellant possession of the land was taken and part of the compensation was deposited with the Special Land Acquisition Officer. B C

3. The respondent No.1 challenged the acquisition on various grounds and the High Court of Judicature at Allahabad by the impugned Judgment dated 21.10.2010 allowed the writ petition and quashed the Notification dated 09.08.2004 and the declaration dated 03.08.2005. Among other reasons, the main reason for taking such a view is that after invoking emergency clause, no award was passed even after the expiry of four years. Thus aggrieved, the Requisitioning Authority - Aligarh Development Authority is before this Court. When the matter was pending before this Court, the land owner non-applicant filed I.A.No.3/2015 contending that respondent No.1 is entitled to a declaration that acquisition proceedings have lapsed in view of the operation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For short '2013 Act'), since neither compensation has been paid to the owner nor possession has been taken by the Land Acquisition Collector. D E F

4. The appellant-Authority has filed reply to the affidavit stating that the compensation has been deposited with the Land Acquisition Collector. As far as the possession is concerned, it is stated in the affidavit that the land has already been taken in possession and a 'full- fledged and complete residential colony has been developed'. G

5. It is however an admitted position that no Award either under the 1894 Act or under the 2013 Act has been passed in respect of the land of respondent No.1. Section 24 of the 2013 Act reads as follows:

"24. Land acquisition process under Act No.1 of 1894 shall be H

A deemed to have lapsed in certain cases.- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

B a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

C b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

D (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

E Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in
F accordance with the provisions of this Act.”

G 6. Section 24 of the 2013 Act envisages mainly two situations; i) where the land acquisition proceedings had already been initiated under the 1894 Act but no award was passed till the date the new Act came into force. (ii) where the Award has been passed but neither the
H owner has been dispossessed nor has he been paid the compensation. Under the first, where the award had not been passed, the acquisition proceedings could continue; but the compensation will have to be determined under the scheme of 2013 Act. Under the second category, there is a statutory lapse of the proceedings. There is also an incidental third situation, where award under the 1894 Act had already

been passed prior to coming into force of the 2013 Act, but payment is yet to be made and possession is yet to be taken. In that case, the further proceedings after the award could continue under the old Act of 1894; but if either payment or possession has not taken effect in five years prior to the 2013 Act, then proceedings will lapse. A

7. In the case before us, since admittedly the award has not been passed, there arises no question of lapse. The land acquisition proceedings would continue but with the rider that the award will have to be passed and compensation determined under the provisions of 2013 Act. B

8. In that view of the matter, it is not necessary to go into various other aspects. Having regard to the factual matrix of the residential colony having been set up, which fact is not controverted also, it cannot be said that there was an urgency for the acquisition. Therefore, the approach made by the High Court is not correct. However, the stand of the Authority that it had deposited 80% of the compensation with the land acquisition officers and hence it was for the owner to collect the money, cannot be appreciated. That is a matter between the Requisitioning Authority and the Acquisition Authority. There is no question of 'come and get' the compensation while compulsorily acquiring the land; the approach required under law is 'go and give'. In this case, no award has been passed and the land value has not been given to the owner. The impugned order is hence set aside. The appellant and the Acquisition Authority are directed to complete the acquisition proceedings by passing an award under the provisions of the 2013 Act. This shall be done within a period of six months and needless also to say that the entire compensation due to respondent No.1 would be calculated in terms of the 2013 Act and the same shall either be deposited with the Land Acquisition Collector or disbursed to the respondent No.1 within one month thereafter. C
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9. The appeal is disposed of as above. No costs.

Devika Gujral

Appeal disposed of.

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